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# Directions for the Future

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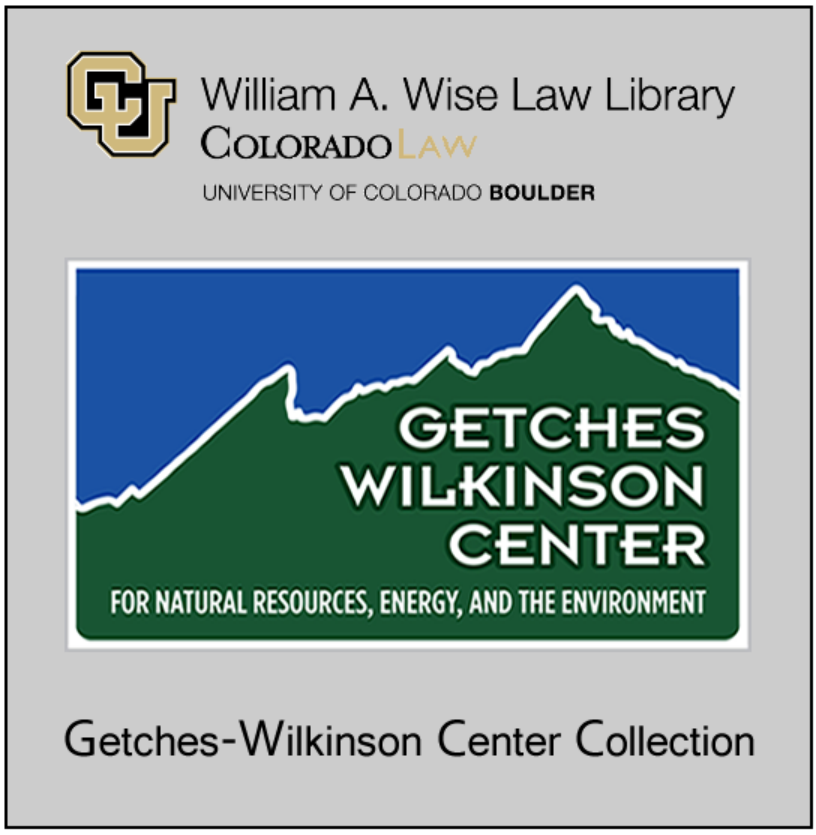


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# DIRECTIONS FOR THE FUTURE

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And Management Act

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DIRECTIONS FOR THE FUTURE

By Clyde O. Martz

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# A Program for the Future

*An introductory summary of the Commission's basic concepts and recommendations for long-range goals, objectives, and guidelines, underlying the more specific recommendations in the individual chapters of the report.*

FEELING THE PRESSURES of an enlarging population, burgeoning growth, and expanding demand for land and natural resources, the American people today have an almost desperate need to determine the best purposes to which their public lands and the wealth and opportunities of those lands should be dedicated. Through the timely action of Congress, and through the work of this Commission, a rare opportunity is offered to answer that need.

For reasons that we will detail, we urge reversal of the policy that the United States should dispose of the so-called unappropriated public domain lands. But we also reject the idea that merely because these lands are owned by the Federal Government, they should all remain forever in Federal ownership.

We have also found that by administrative action the disposal policy, although never "repealed" by statute, has been rendered ineffective. In the absence of congressional guidelines, there has been no predictable administrative policy.

We, therefore, recommend that:

> The policy of large-scale disposal of public lands reflected by the majority of statutes in force today be revised and that future disposal should be of only those lands that will achieve maximum benefit for the general public in non-Federal ownership, while retaining in Federal ownership those whose values must be preserved so that they may be used and enjoyed by all Americans.

While there may be some modest disposals, we conclude that at this time most public lands would not serve the maximum public interest in private ownership. We support the concepts embodied in the establishment and maintenance of the national forests, the National Park System, the National Wildlife Refuge System, and the parallel or subsidiary programs involving the Wilderness Preservation System, the National Riverways and Scenic Rivers Systems, national trails, and national recreation areas.

In recent years, with very few exceptions, all areas that have been set aside for specific use have been given intensive study by both the legislative and executive branches and have been incorporated in one of the programs through legislative action. We would not disturb any of these because they have also been subjected to careful scrutiny by state and local governments as well as by interested and affected people.

Based on our study, however, we find that, generally, areas set aside by executive action as national forests, national monuments, and for other purposes have not had adequate study and there has not been proper consultation with people affected or with the units of local government in the vicinity, particularly as to precise boundaries. Although the Department of the Interior and the Bureau of Land Management classified lands under the temporary Classification and Multiple Use Act of 1964,[1] we believe that in many cases there was hasty action based on preconceived determinations instead of being based on careful land use planning. In addition, there are many areas of the public domain

[1] 43 U.S.C. §§ 1411–1418 (1964).

that have never been classified or set aside for specific use.*

We, therefore, recommend that:

> An immediate review should be undertaken of all lands not previously designated for any specific use, and of all existing withdrawals, set asides, and classifications of public domain lands that were effected by Executive action to determine the type of use that would provide the maximum benefit for the general public in accordance with standards set forth in this report.

The result of these reviews will be the delineation of lands that should be retained in Federal ownership and those that could best serve the public through private ownership. For those to be retained in Federal ownership, there will be a further breakdown indicating which ones should be set aside for special-purpose use—which may or may not include several different uses.

As intimated above, our studies have also led us to the conclusions that the Congress has largely delegated to the executive branch its plenary constitutional authority over the retention, management, and disposition of public land;[2] that statutory delegations have often been lacking in standards or meaningful policy determinations; that the executive agencies, understandably, in keeping with the operation of the American political system, took the action they deemed necessary to fill this vacuum through the issuance of regulations, manuals, and other administrative directives; and that the need for administrative flexibility in meeting varying regional and local conditions created by the diversity of our public lands and by the complexity of many public land problems does not justify failure to legislate the controlling standards, guidelines, and criteria under which public land decisions should be made.

[2] U.S. Const., Art. IV, § 3.

* Commissioner Clark submits the following separate view: Some of the statements in this and other parts of the report may lead to interpretations in the minds of some readers which do not represent views of all members of the Commission. However, since this is a consensus effort, a brief caveat is appropriate regarding the language and subjective tone employed to describe some past actions affecting public lands which should not detract from the general utility of the recommendations. This report must be read against nearly 200 years of history and no doubt a nongovernment report would contain similar inferences that would emphasize perhaps disproportionately the past inaction, delays, and piecemeal approach of Congress.

We, therefore, recommend that:

> Congress should establish national policy in all public land laws by prescribing the controlling standards, guidelines, and criteria for the exercise of authority delegated to executive agencies.

Many types of public land have been reserved by executive action for governmental uses, such as defense installations and atomic energy testing areas. The result has been to materially restrict or preclude their availability for recreation and resource development purposes. In other cases, withdrawals and reservations have severely limited permissible types of uses on tremendous acreages of public land in order to further administrative land policies.

We find that when proposed land uses are passed on by the Congress, they receive more careful scrutiny in the executive branch before being recommended; furthermore, in connection with congressional action, the general public is given a better opportunity to comment and have its views considered. We conclude that Congress should not delegate broad authority for these types of actions.

We, therefore, recommend that:

> Congress assert its constitutional authority by enacting legislation reserving unto itself exclusive authority to withdraw or otherwise set aside public lands for specified limited-purpose uses and delineating specific delegation of authority to the Executive as to the types of withdrawals and set asides that may be effected without legislative action.

Our studies have convinced us that, with respect to lands retained in Federal ownership, the rules and regulations governing their use, to the extent that they exist, have not been adequate to fulfill the purpose; that they were promulgated without proper consultation with, and participation by, either those affected or the general public; that existing regulations are cumbersome; and that the procedures for users or other interested parties to exercise their rights to seek or oppose the grant of interests in public land are likewise cumbersome as well as expensive with no assurance of objective, impartial consideration of appeals from, or objections to, decisions by land managers.

We, therefore, recommend that:

> Public land management agencies should be required by statute to promulgate comprehensive rules and regulations after full consideration of all points of view, including

protests, with provisions for a simplified administrative appeals procedure in a manner that will restore public confidence in the impartiality and fairness of administrative decisions. Judicial review should generally be available.

In pursuing our work, we took cognizance of the fact that between 1965, when we started our work, and the year 2000, the population of the United States will have grown by over 100 million people. The public lands can, must, and will contribute to the well-being of our people by providing a combination of many uses. Some of these will help to take care of the increasing leisure time that Americans of the future will have, while others must help in furnishing the added amounts of food, fiber, and minerals that the larger numbers of people will require.

Under existing statutes and regulations, there is no assurance that the public lands retained in Federal ownership will contribute in the manner that will be required. We find that the absence of statutory guidelines leaves a void which could result in land managers withholding from public use public lands or their resources that may be required for a particular time; that even if land managers plan to make specific goods and services available to the public, there are no long-range objectives or procedures that will assure fulfillment of a program; and that the absence of statutory guidelines for the establishment of priorities in allocating land uses causes unnecessary confusion and inconsistent administration.

We, therefore, recommend that:

Statutory goals and objectives should be established as guidelines for land-use planning under the general principle that within a specific unit, consideration should be given to all possible uses and the maximum number of compatible uses permitted. This should be subject to the qualification that where a unit, within an area managed for many uses, can contribute maximum benefit through one particular use, that use should be recognized as the dominant use, and the land should be managed to avoid interference with fulfillment of such dominant use.

Throughout our work we were aware of the ever-growing concern by the American people about the deterioration of the environment. We share that concern and have looked in vain to find assurance in the public land laws that the United States, as a landowner, had made adequate provision to assure that the quality of life would not be endangered by reason of activities on federally owned lands. We find to the contrary that, despite recent legislative enactments, there is an absence of statutory guidelines by which land management agencies can provide uniform, equitable, and economically sound provision for environmental control over lands retained in Federal ownership.

We, therefore, recommend that:

Federal statutory guidelines should be established to assure that Federal public lands are managed in a manner that not only will not endanger the quality of the environment, but will, where feasible, enhance the quality of the environment, both on and off public lands, and that Federal control of the lands should never be used as a shield to permit lower standards than those required by the laws of the state in which the lands are located. The Federal licensing power should be used, under statutory guidelines, to assure these results.

Every landowner is concerned with the return that he receives for the use of his land or for the revenue he receives from products produced on that land. United States citizens, collectively the owners of the public lands, are similarly concerned. We ascertained from the many witnesses that we heard that the concern of some is that the United States has not been receiving the maximum dollar return; the concern of others is that the United States has been trying to receive too much of a dollar return; while the concern of still others is that the United States is uneven in its efforts to obtain monetary return from its public lands.

From our review, we find that there is a great diversity in public land policy on fees and charges for the various goods and services derived from the public lands; that the fee structures vary among commodities and among agencies administering the public lands; that objectives for the pricing of goods and services are unclear; and that the absence of comprehensive statutory guidelines has created a situation in which land managers are unable to provide uniform equitable treatment for all.

We, therefore, recommend that:

Statutory guidelines be established providing generally that the United States receive full value for the use of the public lands and their resources retained in Federal ownership, except that monetary payment need not represent full value, or so-called market value, in instances where there is no consumptive use of the land or its resources.

Many of those who appeared before the Commission testified to the drastic results that sometimes flow from the uncertainty of tenure and the insecurity of investment of public land users. Studies prepared for the Commission confirm this, despite the fact that not only individuals and companies but many communities are wholly or partially dependent for their economic life on the public lands and their resources.

We, therefore, recommend that:

> Statutory provision be made to assure that when public lands or their resources are made available for use, firm tenure and security of investment be provided so that if the use must be interrupted because of a Federal Government need before the end of the lease, permit, or other contractual arrangement, the user will be equitably compensated for the resulting losses.

The United States need not seek to obtain the greatest monetary return, but instead should recognize improvements to the land and the fact that the land will be dedicated, in whole or in part, to services for the public as elements of value received.

Having determined that there should be no wholesale disposition of the public lands, we turned our attention to the impact that the retention in Federal ownership would have on other levels of government. In doing this, we made an intensive review of existing programs.

Revenue-sharing programs were established for the purpose of compensating state and local governments for the fact that certain types of lands would not be going into private ownership and, therefore, onto the tax rolls. Nonetheless, we find that such programs actually have no relationship to the burdens imposed on state and local governments by the retention of public lands in Federal ownership. The continuation of the general United States policy of providing for transfer to private ownership of virtually all of the public lands would not have required consideration of a comprehensive program to compensate state and local governments for the burdens imposed by Federal ownership of public lands since such ownership was then transitory. The establishment of new programs in recent years and the administration of the public land laws generally has resulted in millions of acres of land being set aside for permanent retention by the Federal Government throughout the 50 states with concomitant unpredicted burdens on state and local governments. The potential retention of additional millions of acres of public domain lands as a result of the review recommended by this Commission requires that we re-examine the obligations and responsibilities of the United States as a landowner in relation to state and local governments upon which continuing burdens will be placed. We find further that any attempt to tie payments to states and local governments to receipts generated from the sale or use of public lands or their resources causes an undue emphasis to be given in program planning to the receipts that may be generated.

We, therefore, recommend that:

> The United States make payments in lieu of taxes for the burdens imposed upon state and local governments by reason of the Federal ownership of public lands without regard to the revenues generated therefrom. Such payments should not represent full tax equivalency and the state and local tax effort should be a factor in determining the exact amount to be paid.

The statute establishing the Public Land Law Review Commission stated that, "those laws, or some of them, may be inadequate to meet the current and future needs of the American people."[3] Our review has led us to the conclusion that the laws are indeed inadequate, first, because of the emphasis on disposition, second, because of the absence of statutory guidelines for administration, as discussed above, and third, because the disposition laws themselves are obsolete and not geared to the present and future requirements of the Nation. With the exception of the temporary Public Land Sale Act,[4] which will expire 6 months after submission of the final report by this Commission, there is no statute permitting the sale of public domain lands in any large tracts for residential, commercial, or industrial use, and we find that the statute for the sale of small tracts has not worked well.

Accordingly, we find that it is necessary to modify or repeal all of the public domain disposition laws and replace them with a body of law that will permit the orderly disposition of those lands that can contribute most to the general welfare by being placed in private ownership.

We, therefore, recommend that:

> Statutory authority be provided for the sale at full value of public domain lands required for certain mining activities or where suitable only for dryland farming, grazing of

[3] 43 U.S.C. § 1392 (1964).
[4] 43 U.S.C. § 1421–1427 (1964).

domestic livestock, or residential, commercial, or industrial uses, where such sale is in the public interest and important public values will not thereby be lost.

In the mid-1860's, statutory provision was made for the use of public lands as sites for new towns.[5] Our studies reveal that relatively few new towns are established on public lands through the townsite laws.

We find that the need for the establishment of new towns to provide for a portion of the anticipated population growth and the parallel growth of industry by the year 2000 will be, realistically, challenging and difficult to fulfill. Compounding the problem are the mounting difficulties facing the large existing cities. While we find that the problems of urban areas cannot be solved by transplanting large numbers of people to the public land areas, we also find that the public lands offer an opportunity for the establishment of at least some of the new cities that will be required in the next 30 years, and that, in many instances, they offer the only opportunity for the expansion of existing communities.

We, therefore, recommend that:

Legislation be enacted to provide a framework within which large units of land may be made available for the expansion of existing communities or the development of new cities.

Until some experience has been gained in the various mechanisms that might be utilized and a national policy adopted concerning the establishment of new cities generally, Congress should consider proposals for the sale of land for new cities on a case-by-case basis.

Our inquiries and studies have revealed that there are many instances where all concerned will agree that public domain land previously incorporated within a national forest could best serve the public interest by being transferred to private ownership. We find, however, that the present procedures for the accomplishment of such transfer, requiring as they do an exchange for other lands, are cumbersome, administratively burdensome, and unnecessarily expensive to both the Government and the private party, inordinately time consuming, and result in the acquisition of land that may not, in fact, be needed by the United States any more than the land of which it is disposing through the exchange process.

[5] 43 U.S.C. § 711 et seq. (1964).

We, therefore, recommend that:

Statutory authority be granted for the limited disposition of lands administered by the Forest Service where such lands are needed to meet a non-Federal but public purpose, or where disposition would result in the lands being placed in a higher use than if continued in Federal ownership.

The administration of some programs, such as recreation, can be accomplished just as well, if not better, by state and local government units; in other instances, Federal public lands are required for construction of schools and other buildings that provide state or local government services.

We find that it is in the best interest of all concerned to encourage state and local governments to assume complete responsibility for the maximum number of programs that those levels of government can and will administer and to acquire title to the required land in order to permit the proper level of investment to be made.

We, therefore, recommend that:

Legislation be enacted to provide flexible mechanisms, including transfer of title at less than full value, to make any federally owned lands available to state and local governments when not required for a Federal purpose if the lands will be utilized for a public purpose.

Throughout our studies and inquiries, we compared the policies, practices, and procedures applicable to the public lands as defined in the statute establishing the Public Land Law Review Commission with the policies, practices, and procedures applicable to other types of lands where such other lands were managed in conjunction with or had characteristics similar to public lands concerning which this Commission was charged with responsibility of making recommendations. We also take note of the fact that within the definition of lands in our Organic Act, there are both "public domain" and "acquired" lands as discussed elsewhere in this report.

We find that there is no logical basis for distinguishing between public domain and acquired lands or between lands defined as "public lands" and all other federally owned lands.

We, therefore, recommend that:

Generally, in both legislation and administration, the artificial distinctions between pub-

lic domain and acquired lands of the Federal Government should be eliminated.

We find that the division of responsibility for the development of policy and the administration of public lands among Congressional Committees and several Federal departments and agencies has led to differences, contradictions, and duplications in policies and programs. Not only have these factors been administratively burdensome, but they have also been the source of confusion to citizens dealing with the Government.

We, therefore, recommend that:

Responsibility for public land policy and programs within the Federal Government in both the legislative and executive branches should be consolidated to the maximum practicable extent in order to eliminate, or at least reduce, differences in policies concerning the administration of similar public land programs.

We submit the foregoing findings and basic recommendations as a statement of principles that should govern the retention and management or disposition of federally owned lands. In the chapters that follow, we will develop detailed background in specific subject areas, along with more detailed recommendations designed to implement the basic principles enunciated in the foregoing recommendations.

In arriving at these recommendations and those that follow, we made each decision on the basis of what we consider to be the maximum benefit for the general public, in accordance with the statutory charge to the Commission as cited in the Preface.

We have not defined in any one place what we consider to be "the maximum benefit for the general public." Nor have we defined a set of criteria that will lead all persons to the same conclusion as to what is the maximum benefit for the general public. These are tasks that are perhaps best left to sociologists, philosophers, and others. But, we did study the problem and found, in the end, that our work was eased and made more meaningful by adopting a convenient categorization of broadly justifiable, unexceptionable, yet often conflicting, interests within the totality of the general public.

Obviously, the general public is made up of many persons and groups with conflicting aims and objectives. Stated another way, it may be said that there are several "publics" which, in the aggregate, make up the general public with respect to policies for the public lands. Perhaps this categorization of identifiable interests would be useful in other areas of public policy, too. In any case, we found it useful in our work and applied it to all of our decisions. The six categories of interests we recognized are:

—*the national public:* all citizens, as taxpayers, consumers, and ultimate owners of the public lands are concerned that the lands produce and remain productive of the material, social, and esthetic benefits that can be obtained from them.

—*the regional public:* those who live and work on or near the vast public lands, while being a part of and sharing the concerns of the national public, have a special concern that the public lands help to support them and their neighbors and that the lands contribute to their overall well-being.

—*the Federal Government as sovereign:* the ultimate responsibility of the Federal Government is to provide for the common defense and promote the general welfare and, in so doing, it should make use of every tool at its command, including its control of the public lands.

—*the Federal Government as proprietor:* in a narrower sense, the Federal Government is a landowner that seeks to manage its property according to much the same set of principles as any other landowner and to exercise normal proprietary control over its land.

—*state and local government:* most of the Federal lands fall within the jurisdiction limits of other levels of governments, which have responsibility for the health, safety, and welfare of their constituents and, thus, an interest in assuring that the overriding powers of the Federal Government be accommodated to their interests as viable instruments in our Federal system of government.

—*the users of public lands and resources:* users, including those seeking economic gain and those seeking recreation or other noneconomic benefits, have an interest in assuring that their special needs, which vary widely, are met and that all users are given equal consideration when uses are permitted.

The Commission in each of its decisions gave careful consideration to the interests of each of the several "publics" that make up the "general public." Distinguishing among these interests required that the Commission specifically consider each of them and, thus, assure that the decisions of the Commission, to the best of its ability, reflect all of the interests of the general public.

In applying the procedure that we did, in each case it was possible to see which interest is affected most. This is not only useful in the decisionmaking process but provides a healthy atmosphere in which all parties

interested can be assured that consideration has been given to them.

We, therefore, recommend that:

> In making public land decisions, the Federal Government should take into consideration the interests of the national public, the regional public, the Federal Government as the sovereign, the Federal proprietor, the users of public lands and resources, and the state and local governmental entities within which the lands are located in order to assure, to the extent possible, that the maximum benefit for the general public is achieved.

## Premises

Fundamental premises are beliefs set forth in the foregoing underlying principles as well as in the implementing recommendations that follow. These are:

1. *Functioning of Government in a manner that reflects the principles set forth in the Constitution.*

In adhering to this principle, we seek to give recognition particularly to these specific principles:

—Congress, elected by and responsive to the will of the people, makes policy; the executive branch administers the policy.

—Maintenance of a strong Federalism. The Federal Government not only recognizes the importance of state and local governments in the Federal system but affirmatively supports and strengthens their roles to the maximum extent possible.

—The Federal Government protects the rights of individual citizens and assures that each one is dealt with fairly and equitably.

2. *Balancing of all major interests in order to assure maximum benefit for the general public.*

—No one of the interests we have identified should benefit to the unreasonable detriment of another unless there is an overriding national interest present.

3. *Providing responsible stewardship of the public lands and their resources.*

—Environmental values must be protected as major permanent elements of public land policy.

—Public lands must be available to meet a diversity of expanding requirements without degradation of the environment and, where possible, enhancement of the environment.

—Better planning will provide increased efficiency in the allocation of resources and the investment of funds.

—Guidelines must be established to provide for priorities in reducing conflicts among users and resolving conflicts when they arise.

4. *In addition to serving national requirements, the public lands must serve regional and local needs.*

—In many areas, consideration must be given to dependence of regional and local social and economic growth upon public lands and land policy.

—In planning the use of public lands, the uses of nonpublic lands must be given consideration.